

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application of:

Kenji SAKAMOTO

Application No.: 10/553,000

Confirmation No.: 5862

Filed: July 31, 2006

Art Unit: 2617

For: WIRELESS TERMINAL, BASE DEVICE,  
WIRELESS SYSTEM, WIRELESS  
TERMINAL CONTROL METHOD,  
WIRELESS TERMINAL CONTROL  
PROGRAM, AND COMPUTER READABLE  
STORAGE MEDIUM STORING SAME  
PROGRAM

Examiner: I. R. Jama

RENEWED REQUEST FOR REFUND

MS 16

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I. REFUND REQUEST

This is a request for a refund with respect to the charge to Deposit Account No. 02-2448 shown on the statement for the month of October 2010 for the above-identified

application       patent

A copy of the monthly statement is enclosed.

**II. FEES CHARGED FOR WHICH REFUND REQUESTED**

	AMOUNT OF REFUND REQUESTED
<input type="checkbox"/> filing fee	
<input type="checkbox"/> search fee	
<input type="checkbox"/> examination fee	
<input type="checkbox"/> surcharge for filing the basic filing fee or oath/declaration on a date later than the filing date of the application (37 C.F.R. § 1.16(e))	
<input checked="" type="checkbox"/> extension of term	
<input type="checkbox"/> first month	
<input type="checkbox"/> second month	
<input checked="" type="checkbox"/> third month	\$980.00
<input type="checkbox"/> fourth month	
<input type="checkbox"/> fifth month	
<input type="checkbox"/> excess claims	
<input type="checkbox"/> issue fee	
<input type="checkbox"/> petition fee	
<input type="checkbox"/> patent maintenance fee	
<input type="checkbox"/> first maintenance fee	
<input type="checkbox"/> second maintenance fee	
<input type="checkbox"/> third maintenance fee	
<input type="checkbox"/> patent maintenance fee surcharge	
<input type="checkbox"/> Other	
<input type="checkbox"/>	
<b>TOTAL REFUND REQUESTED</b>	<b>\$980.00</b>

### III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

MPEP § 607.02 states in part:

"Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) any fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required."

The facts in this application satisfy both (1) and (2) above, as follows. On September 3, 2010, the Examiner issued an Advisory Action incorrectly indicating by checking box 1(a) that the period for reply expires 3 months from the filing date of the final rejection. A review of the facts indicate the Examiner incorrectly checked box 1(a) when box 1(b) should have been checked instead, indicating the period would run from the mailing date of the Advisory Action, because the Amendment which was filed on June 15, 2010, was filed at the two month date. Thereafter, the October 1, 2010 Amendment and RCE was filed one month after the Advisory Action dated September 3<sup>rd</sup> and should have only had a one month extension of time, not a three month extension of time. Thus, the extension of time for the RCE was clearly a "paid by mistake" and a "fee paid in excess of the amount of fee that is required" under 37 CFR § 1.26(a).

It is our understanding, based upon a telephone conversation with Ms. Earlene Green on February 9, 2011, that the request for refund was denied based upon the Examiner's mistake in the Advisory Action indicating the time would run from the date of the final rejection, rather than the date of mailing of the Advisory Action. As should now be clear, the Advisory Action was incorrectly marked, thus penalizing Applicant for the extraordinary length of time that lapsed between the filing of the Amendment on June 15, 2010 and the issuance of the Advisory Action on September 3, 2010.

Applicant respectfully requests reconsideration of the request for refund fee paid in excess of the amount of fee that is required, for the reasons noted above.

### IV. REFUND OF 50% OF FEES

- enclosing a copy of the written Assertion of Small Entity Status
  - filed herewith
  - filed on

### V. MANNER OF REFUND

It is respectfully requested that the excess fee of **980.00** be credited to Deposit Account No. 02-2448.

VI. REMARKS

Favorable action on the present Request is respectfully requested.

Dated: February 18, 2011

Respectfully submitted,

By   
Michael R. Cammarata  
Registration No.: 39,491  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road, Suite 100 East  
P.O. Box 747  
Falls Church, VA 22040-0747  
703-205-8000

Attachment: Copy of Deposit Account



**United States  
Patent and  
Trademark Office**

Name: BIRCH STEWART  
KOLASCH & BIRCH

Attention:

Street Address 1: 8110 GATEHOUSE ROAD

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Country: UNITED STATES

Telephone: 703-205-6090

Fax:

Balance

Amount:

**BIRCH, STEWART, KOLASCH & BIRCH, LLP**  
**Oct 2010 Deposit Account Reconciliation**

Date	Reference No.	Docket Number	PTO Fee Code	BSKB Cost Code	Fee
4-Oct	10553000	1248-0828PUS1	1253	DX	\$1,110.00